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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

DRY BULK SINGAPORE PTE. LTD.,

Plaintiff,

vs.

AMIS INTEGRITY S.A. *in personam* and
M/V AMIS INTEGRITY (IMO 9732412)
her engines, freights, apparel, appurtenances,
tackle, etc., *in rem.*,

Defendants.

No. 3:19-CV-01671-BR

Admiralty

**PLAINTIFF DRY BULK SINGAPORE
PTE. LTD.'S MOTION FOR LEAVE TO
AMEND THE VERIFIED COMPLAINT**

LR 7-1 CERTIFICATE

In compliance with Local Rule 7-1, the parties made a good faith effort through telephone conference and then email to discuss whether the motion for leave to file an Amended Verified

Complaint would be unopposed by Defendants. Despite the good faith efforts of counsel, the parties have not been able to resolve this dispute and this motion now follows.

INTRODUCTION

COMES NOW, Plaintiff Dry Bulk Singapore PTE. LTD. (hereinafter “Plaintiff” or “Dry Bulk”), by and through undersigned counsel respectfully submits this Motion for Leave to File its Amended Verified Complaint in accordance with Fed. R. Civ. P. 15 and Local Rule 15-1. A copy of the proposed Amended Verified Complaint is attached as **Exhibit A** to this motion. It is respectfully submitted that the proposed Amended Verified Complaint is both timely and proper under the Federal Rules of Civil Procedure, the Local Rules of this Court, and the Case Management Order entered in this matter (Dkt. 50). In support thereof, Plaintiff would respectfully show as follows.

PROCEDURAL BACKGROUND

Plaintiff filed its Verified Complaint in this action on October 17, 2019 naming as Defendants Amis Integrity S.A. *in personam*, and M/V AMIS INTEGRITY *in rem* (hereinafter “the Vessel”) (Dkt.1).

In addition, a Warrant of Arrest of the M/V AMIS INTEGRITY was signed by the Honorable District Court Judge Michael Simon on October 17, 2019 (Dkt. 11) in accordance with the provisions of Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims and the Vessel was arrested on the same day.

Defendant Amis Integrity, S.A. filed a Notice of Restricted Appearance on behalf of the Vessel, M/V AMIS INTEGRITY, on October 18, 2019 (Dkt. 17), together with an Emergency Motion to Vacate the Arrest of the Vessel (Dkt. 18).

A hearing was held by this Honorable Court on October 23, 2019 at which hearing Defendant, Amis Integrity, S.A. agreed to and did post a surety bond in the amount of Two Million Five Hundred Thousand (\$2,500,000) Dollars for the release of the Vessel from the

arrest (Dkt. 40.1). Upon the posting of the surety bond, the Vessel was released by the Order of this Honorable Court (Dkt. 41).

Defendant, Amis Integrity, S.A., although fully aware of the allegations contained in the Verified Complaint, has not yet been served personally and has not filed a general appearance in this matter.

Initial Discovery Disclosures and Supplemental Discovery Requests have been exchanged by the parties, with Amis Integrity S.A. responding to and propounding Initial and Supplemental Discovery Requests on behalf of the M/V AMIS INTEGRITY. No depositions have yet been taken in the matter.

On December 18, 2019, this Honorable Court issued a Case Management schedule in the matter. Fact discovery is due to be completed by April 30, 2020. (Dkt. 50).

FACTUAL BACKGROUND

The proposed Amended Verified Complaint updates and revises the pleadings to reflect the fact that based on discovery produced by Defendant, Amis Integrity S.A., in response to Plaintiff's Initial and Supplemental Requests for Production of Documents and Interrogatories, it is undisputed that Wisdom Marine Lines, S.A. played a substantial role in the wrongful withdrawal of the Vessel from the service of Dry Bulk and directly financially benefited from its wrongful conduct. The responses provided and the documents produced by Amis Integrity S.A. indicate, during the relevant period of time that the Vessel was on charter to Dry Bulk, the listed "Owner" of the Vessel was Defendant, Amis Integrity, S.A. and Wisdom Marine Lines, S.A. is listed as the "Manager" of the Vessel (see Exhibit 1 to Huan Rong Jang Declaration (Dkt. 19.1)).

In addition, the documents produced by Amis Integrity, S.A. indicate that the actual beneficiary of charter hire paid for the use of the Vessel during the relevant period was Wisdom Marine Lines, S.A. Both Amis Integrity, S.A. and Wisdom Marine Lines, S.A. are wholly owned and controlled by the "Wisdom Lines Group", as is a company called Wisdom Marine Lines Co. Ltd., which together with other employees of the Wisdom Lines Group, made all the decisions in

respect to the wrongful withdrawal of the Vessel from the service of Dry Bulk. Amis Integrity S.A.'s Initial Disclosures indicate that the following individuals were involved in the decision to withdraw and then subsequently charter the Vessel to United Bulk Carriers International, Inc: Huang Rong Jang, Curly Tsao, Mike Tsao and YG Lin. Counsel have discussed scheduling their respective depositions in Taiwan, but because of the Corona Virus situation the exact dates of such depositions are currently undecided.¹

Moreover, Wisdom Marine Lines, S.A. was the beneficiary of the substantial expenses (over \$850,000) incurred by Dry Bulk in positioning the Vessel in South America before the wrongful withdrawal thereof, and the recipient of the hire payments and subsequent windfall profit of over \$800,000 received from the charter of the Vessel to a company called United Bulk Carriers International, Inc immediately following the wrongful withdrawal. Wisdom Marine Lines, S.A. continued to be the beneficiary of all hire payments received for the Vessel subsequent to the wrongful withdrawal from Dry Bulk's service through what would have been the re-delivery date under Dry Bulk's charter with 24Vision (i.e. January 29, 2020). But for the tortious interference and wrongful withdrawal of the Vessel by Amis Integrity S.A. and Wisdom Marine Lines, S.A., Dry Bulk would have been in a position to earn the additional freights which opportunity was foreclosed by the wrongful withdrawal of the Vessel by Wisdom Marine Lines, S.A. for its benefit and unjust enrichment.

As such, it is respectfully submitted that Wisdom Marine Lines, S.A. is a significant and consequential party to this pending action and the Motion to Amend the Complaint to add it as an additional defendant should be granted.

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¹ Upon receipt of the Court's authority to file the Amended Verified Complaint, processor servers have been engaged to promptly serve Amis Integrity, S.A. and Wisdom Marine Lines, and there should not be any delay in completion of discovery as a result of the filing of the Amended Verified Complaint.

ARGUMENT

Under Federal Rule of Civil Procedure 15(a)(2), a “court should freely give leave when justice so requires.” Fed. R. Civ. P. 15. The United States Supreme Court has stated that Rule 15’s “mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 277, 9 L. Ed. 2d 222 (1962). Leave to amend should be “given with ‘liberality’ so that matters may be decided based on merit, rather than ‘bare pleadings.’” *Heffington v. Gordon, Aylworth & Tami, P.C.*, No. 3:16-cv-02079-AC, 2017 U.S. Dist. LEXIS 119425 at *3 (D. Or. Jul. 28, 2017) (citing *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)). A court should consider the following four (4) factors in deciding whether to grant leave to amend: 1) prejudice; 2) bad faith; 3) futility; or 4) undue delay. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 277, 9 L. Ed. 2d 222 (1962)).

Here, the procedural and factual status of this case support the Court granting Plaintiff’s request for leave to amend. The substantive revisions to the original Verified Complaint do not prejudice the Defendants and will cause no undue delay, as no depositions have yet been had in this matter and fact discovery is still on-going. In fact, the depositions that are being scheduled in this matter by counsel for the parties are of individuals who are employed by and/or were involved in the decision-making process on behalf of Wisdom Marine Lines, S.A. in respect to the withdrawal of the Vessel and the subsequent unjust enrichment of Wisdom Marine Lines, S.A. as a result thereof.

The amendment will not be futile and is not sought in bad faith, as Plaintiff’s Amended Verified Complaint updates the factual allegations in support of the underlying claim(s) on the basis of discovery recently produced by Defendants in this pending matter. Furthermore, the amendment is timely and will not cause undue delay or prejudice to the Defendants as the present motion and proposed Amended Verified Complaint complies with the discovery deadlines imposed by this Court.

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CONCLUSION

WHEREFORE, for the reasons more fully stated above, Plaintiff respectfully requests that this Honorable Court enter an order pursuant to Fed. R. Civ. P. Rule 15 and Local Rule 15-1, granting Dry Bulk Singapore PTE. LTD.'s Motion for Leave to File an Amended Verified Complaint, and for such other and just relief as Plaintiff may be entitled to.

DATED: March 3, 2020

Respectfully submitted,

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*Attorneys for Plaintiff,
Dry Bulk Singapore PTE. LTD.*

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all associated counsel.

BY: s/ David R. Boyajian
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